THE HON'BLE SRI JUSTICE T.Ch.SURYA RAO
And
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.28720 of 1997

Dated: 04.07.2006

Between:

Tappa Bee Bee W/o Nanne Saheb and others.

... PETITIONERS

And:

The Special Court under A.P.Land Grabbing (Prohibition) Act, Hyderabad and others.

...RESPONDENTS

THE HON'BLE SRI JUSTICE T.Ch.SURYA RAO
And
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No.28720 of 1997

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

In the instant writ petition, the petitioners seek a writ of certiorari to quash the judgment, dated 30.08.1997, passed by the learned Special Court under the A.P.Land Grabbing (Prohibition) Act, Hyderabad, in L.G.C.No.116 of 1994.

Respondents 2 to 6 herein are the applicants in L.G.C.No.116 of 1994. The 7th respondent herein is no other than the mother of respondents 2 to 6 and 13th respondent in L.G.C.No.116 of 1994. The

applicants filed the application in L.G.C.No.116 of 1994 for declaration that respondents 1 to 12 and 14 to 23 therein were land grabbers and for delivery of vacant possession of the said land to them, besides granting compensation, costs, etc. Eventually, after completing the enquiry, the learned Special Court allowed that application, under the impugned judgment.

The case of the applicants therein was that they along with 13th respondent were the owners of the property mentioned in the schedule appended thereto and that the respondents 1 to 12 and 14 to 23 grabbed the same. As against this case, the case of the respondents, as can be seen from the counter filed by the first respondent therein, is that the first respondent purchased the land in an extent of Ac.0.16 cents covered by Sy.No.584/2 by means of a registered sale deed dated 06.04.1984, and constructed a house thereon by spending a huge sum of Rs.2 lakhs. It was their further case that late Viswanatham Chinna Subbarayudu executed an agreement, dated 16.03.1970, in favour of his younger brother, Viswanatham Bala Subbarayudu, authorizing him to sell Ac.0.50 cents of land covered by Sy.No.584/2 and Ac.0.16 cents of land covered bySy.No.583/1 situated in Proddutur, for discharging the debts incurred by him, and accordingly Viswanatham Bala Subbarayudu along with his elder brother, Pedda Subbarayudu, sold small extents of land to the respondents 1 to 12 therein under various registered sale deeds for a valuable consideration and all of them constructed small houses on the said lands and have been residing in the said houses.

The Special Court framed the following four issues for enquiry:

1) Whether the petitioners 1 to 5 and R13 in this LGC are owners of the petition schedule land as contended by them?

2) Whether the rival title set up by R1 to R5, R7, R8 and R10 in respect of the sites in their occupation is true and valid?

3) Whether R1 to R12 and R14 to R23 are land grabbers within the meaning of Section 2(d) and (e) of the A.P.Land Grabbing (Prohibition) Act?

4) To what relief?

During the course of enquiry, two witnesses were examined on the side of the applicants and the documents, Exs.A1 to A8 were got marked. One witness was examined on the side of the respondents and Exs.B1 to B19 were got marked. On the side of the Court, Exs.C1 to C3 were marked.

Appreciating the evidence thus adduced on either side, the leaned Special Court was of the view that the applicants were the owners of the land in dispute. Consequently, it held that the respondents were the land grabbers. While coming to the conclusion that the applicants were the owners of the land in dispute, reliance was sought to be placed mainly on Ex.A-3, the certified copy of the judgment dated 29.03.1994 in O.S.No.70 of 1986 on the file of the Court of the Subordinate Judge, Proddutur, by the learned Special Court. It was held that the said judgment would operate as *res judicata* in the matter.

Sri D.Sudarsana Reddy, learned senior counsel appearing for the petitioners in the instant writ petition, represents that there is no independent evidence produced by the applicants in the Land Grabbing Case, except placing reliance on Ex.A3, whereas the respondents filed the registered sale deeds under which they purchased the lands in dispute.

The writ petitioners are respondents 5, 7, 9, 10, 16, 17, 19, 22 and 23 in L.G.C.No.116 of 1994. The 4th petitioner herein who has

been arrayed as 9th respondent in L.G.C.No.116 of 1994 remained *ex parte.* As can be seen from the plea taken by the writ petitioners in the land grabbing case, they are tracing their title through Viswanatham Pedda Subbarayudu and Bala Subbarayudu, under an agreement said to have been executed in their favour by late Viswanatham Chinna Subbarayudu. Ultimately, the title was traced to Viswanatham Chinna Subbarayudu, who was no other than the husband of the 13th respondent therein and the father of applicants 1 to 5. The 13th respondent, Viswanatham Kanaka Rathnam, filed O.S.No.70 of 1986 on the file of the Court of the Subordinate Judge, Proddutur for declaration of her title and for consequential perpetual injunction and mandatory injunction. Defendants 1 and 2 in the said suit were the said Viswanatham Pedda Subbarayudu and Bala Subbarayudu, respectively. The other defendants in the suit claimed title through the defendants 1 and 2 under Ex.B8 agreement said to have been executed by late Viswanatha Chinna Subbarayudu in favour of Pedda Subbarayudu and Bala Subbarayudu, authorizing them to sell his lands for discharging his debts. Eventually, in the judgment in O.S.No.70 of 1986, it was held that Ex.B8 agreement was fabricated one. Admittedly, the suit in O.S.No.70 of 1986, ended in a decree in favour of the plaintiff declaring her title *qua* the contesting defendants therein. As stated hereinabove, Viswanatham Pedda Subbarayudu and Bala Subbarayudu were defendants 1 and 2 in the said suit. The writ petitioners are now tracing their title through the said Pedda Subbarayudu and Bala Subbarayudu under an agreement said to have been executed by late Chinna Subbarayudu in their favour. The judgment and decree passed in O.S.No.70 of 1986 attained finality and there has been no gain saying of the same. In that view of the matter, the Special Court held that the judgment in O.S.No.70 of 1986 would operate as *res judicata*. There is nothing to interfere with the finding of the Special Court that the judgment in O.S.NO.70 of 1986 would operate as *res judicata*, since it is in between the parties *inter se*

and the parties who are claiming through them as their representatives, and the matter was heard and finally disposed of by a competent Court having jurisdiction to decide the same. The principle of *res judicata*, as incorporated in Section 11 of the Code of Civil Procedure, 1908, would, in our considered view, squarely apply to the facts of the case. Therefore, the finding that the applicants were the owners of the land in dispute is quite unassailable.

It is the contention of the learned senior counsel appearing for the writ petitioners that inasmuch as the petitioners have been claiming title over the land under various registered sale deeds, regardless of the fact that those sale deeds are valid or invalid, the writ petitioners cannot be called as land grabbers.

The provisions of Section 10 of the Land Grabbing (Prohibition) Act, 1982 (for short "the Act"), in our considered view, would sufficiently answer the contention of the learned senior counsel. Section 10 of the Act places burden squarely upon the persons who are alleged to be the land grabbers to show before the Court that they have not grabbed the land, so as to rebut the presumption incorporated therein, *inter alia.* Obviously, the title over the disputed land vests on the applicants in the land grabbing case, who are the respondents 2 to 6 herein and when once they are able to show their title over the land, the legal presumption that the writ petitioners were the land grabbers would operate *proprio vigore.* Except the plea that had already been taken by the writ petitioners before the Special Court, there is no other plea taken by them in support of their contention that they cannot be called as land grabbers. It may be reiterated here that their plea has been negatived by a competent civil Court. When the civil Court decreed the suit for title and granted perpetual injunction in favour of respondents 2 to 6, the subsequent possession of the writ petitioners would obviously become illegal and unlawful, leave alone the fact that there is an order of perpetual injunction granted by a competent civil

Court. Therefore, it is only a case where the writ petitioners are not able to rebut the presumption incorporated in Section 10 of the Act, nay a case where their possession is obviously illegal and unlawful and contrary to perpetual injunction granted by the civil Court. In that view of the matter, we have no hesitation to concur with the findings reached by the learned Special Court in this regard.

For the above reasons, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.

(T.Ch.SURYA RAO,J)

4th July 2006.

(G.CHANDRAIAH, J)

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